

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BILLY ROY TYLER,)	
)	
Plaintiff,)	8:04cv94
)	
vs.)	MEMORANDUM AND ORDER
)	
STEPHEN J. CERVENY, et al,)	
)	
Defendants.)	

This matter is before the court on the following pending motions: (1) filing nos. 67, 71, 72 and 83, the Motions for Summary Judgment filed by the plaintiff, Billy Roy Tyler; (2) filing no. 70, the plaintiff's Motion for Leave to Amend the complaint; (3) filing no. 73, the plaintiff's Motion to Add Addendum Nunc Pro Tunc; (4) filing no. 76, the plaintiff's Motion to Compel; (5) filing no. 77, the plaintiff's Motion to hold the defendant in contempt; (6) filing no. 80, the plaintiff's Objection; (7) filing no. 81, the plaintiff's Motion to proceed with the summary judgment motions; and (8) filing no. 86, the plaintiff's Motion to Strike his Notice of Appeal. In his complaint, the plaintiff alleges that two police officers stopped and detained the plaintiff on October 3, 2003, without probable cause to do so, and that the defendants used excessive force in arresting the plaintiff. However, only one of the named defendants, Stephen J. Cerveney, remains a party to this litigation.

Factual issues preclude the entry of summary judgment in the plaintiff's favor, and, thus, the plaintiff's motions for summary judgment (filing nos. 67, 71, 72 and 83) are denied.

Leave to amend (filing no. 70) at this late stage in the litigation is also denied. The proposed Amended Complaint would add parties and claims well beyond the initial subject matter of this case and would interject into this litigation matters at issue and presently

pending before this court in other actions brought by the plaintiff. Similarly, filing no. 73, the plaintiff's Motion to Add Addendum Nunc Pro Tunc, is denied because the proposed Addendum relates to the Amended Complaint, which has not been accepted, and has nothing to do with the dispute between the plaintiff and the defendant in this case.

Filing no.76, the plaintiff's Motion to Compel, and filing no. 77, the plaintiff's Motion to hold the defendant in contempt, are denied. The defendant has filed the answers to interrogatories and proposed pretrial order (filing nos. 78 and 79) which were the subject of the plaintiff's motions.

Filing no. 80, the plaintiff's Objection to the proposed pretrial order is noted. Filing no. 81, the plaintiff's Motion to proceed with the summary judgment motions, is granted in that the court has now ruled on the summary judgment motions. Filing no. 86, the plaintiff's Motion to Strike his Notice of Appeal, is granted.

IT IS THEREFORE ORDERED:

1. That filing nos. 67, 71, 72 and 83, the plaintiff's Motions for Summary Judgment, are denied;
2. That filing no. 70, the plaintiff's Motion for Leave to Amend, is denied;
3. That filing no. 73, the plaintiff's Motion to Add Addendum Nunc Pro Tunc, is denied;
4. That filing no.76, the plaintiff's Motion to Compel, is denied as moot;
5. That filing no. 77, the plaintiff's Motion to hold the defendant in contempt, is denied;
6. That filing no. 80, the plaintiff's Objection to the proposed pretrial order, is noted;

7. That filing no. 81, the plaintiff's Motion to proceed with the plaintiff's summary judgment motions, is granted in that the court has now ruled on the summary judgment motions;

8. That filing no. 86, the plaintiff's Motion to Strike his Notice of Appeal, is granted; and

9. That, pursuant to Fed. R. Civ. P. 54(b), the foregoing decision is not a final and appealable order until after entry of judgment adjudicating all the claims and rights of the parties.

November 15, 2005.

BY THE COURT:

/s Richard G. Kopf
United States District Judge